IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.190 OF 2004

Suresh Shankar Nerkar .. Applicant
Versus
Mrs.Kalpana Suresh Nerkar & Anr... Respondents

Mr.K.K.Malpathak for applicant
Mr.Sanjeev Kadam for respondent No.1
Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th December 2005.

P.C.

. Notice was directed to be issued in this matter on 17th March 2004 with a direction that the same would be disposed of finally at admission stage.

2. This application under section 482 of Cr.P.C. challenges an order passed by the learned Metropolitan Magistrate on 11th December

2003, by which he has directed that two articles i.e. computer and steel cupboard be returned to respondent No.1 herein on her executing a bond of Rs.35,000/-.

3. Application for return of property was filed by applicant herein on 11th June 2003. It is his submission that goods worth Rs.33,650/- (computer and steel cupboard) belong to him and that they were purchased from his own earnings and he has documents to substantiate the same. Further that the same were seized by Samata Nagar police station in connection with C.R.No.263 of 2002 filed under section 498A and 406 I.P.C. at the instance of complainant (respondent No.1), therefore, seizure be set aside and direction be issued to return this property to him.

4. This application was resisted by the first respondent Kalpana and she contended that she is owner of the articles in question. Thus,

she asserted her right for return of property to her.

5. Learned Magistrate has passed an order dated 11th December 2003. Mr.Malpathak contends that in paras 5 and 6 of the impugned order, Metropolitan Magistrate has referred to the materials produced on record but has erroneously turn down the application.

6. Mr.Kadam on the other hand contends that in any event, application cannot be considered because now a decree is passed in Matrimonial Petition No.244 of 2002 by the Civil Judge, Senior Division, Kalyan which records very clearly that parties have exchanged all articles and properties and have no claims, therefore, against each other. This decree was passed on petition presented on 4th October 2002. Decree is passed on 6th January 2005.

7. In my view, considering the aforesaid submissions and the materials produced it would be appropriate to revive the application preferred by the petitioner as well as first respondent herein and the Metropolitan Magistrate should consider the rival pleas afresh and pass appropriate orders in accordance with law. It would be open for the parties to place such materials as are permissible in law including orders of civil court before the Magistrate. The impugned order is set aside. Applications for return of property are restored to file of Metropolitan Magistrate to be disposed on merits and in accordance with law within a period of four weeks from today. All contentions on merits are kept open including the plea of Mr.Malpathak that proceedings before Civil Judge, Senior Division would not in any manner affect the rights of petitioner to claim articles.

8. This order is passed because of the

statement made before me by Mr.Kadam, on instructions that both articles (computer and steel cupboard) are still lying with first respondent wife and that she would not dispose of the same till theapplication is decided by the Magistrate.

(S.C.DHARMADHIKARI, J)